

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Siga Broadcasting Corporation)	File Number EB-06-HU-091
)	
Licensee of Station KTMR)	NAL/Acct. No. 200732540002
Edna, Texas)	
Facility ID # 28191)	FRN 0003790425
Owner of Antenna Structure #1232021)	

FORFEITURE ORDER

Adopted: April 20, 2007

Released: April 24, 2007

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of twenty-one thousand dollars (\$21,000) to Siga Broadcasting Corporation (“Siga Broadcasting”), licensee of station KTMR, in Edna, Texas and owner of antenna structure #1232021, for willful and repeated violation of Sections 17.51(a) and 73.1745(a) of the Commission’s Rules (“Rules”)¹ and for repeated violation of Section 73.49 of the Rules.² The noted violations involve Siga Broadcasting’s failure to exhibit red obstruction lights from sunset to sunrise, operation of the station after local sunset, and failure to enclose an antenna tower with radio frequency potential at the base within an effective locked fence.

II. BACKGROUND

2. On December 11, 2006, in response to a complaint that the station was remaining on the air after sunset, an agent with the Commission’s Houston Office of the Enforcement Bureau (“Houston Office”) inspected the transmitter site for station KTMR in Edna, Texas. At the transmitter site, the agent observed a three-tower directional array, which was of the type that normally has radio frequency potential at the bases. Each of the three antenna structures was enclosed within a fence. Although the gate had a padlock, the agent observed that the gate latching mechanism for one of the fences had separated from the gate and would not hold the gate closed. The property for the transmitter site did not have a perimeter fence. After sunset on December 11, 2006, the agent observed that the red obstruction light on the top of antenna structure #1232021 was not operating. All three of station KTMR’s structures are greater than 200 feet in height, are registered with the Commission, and require red obstruction lighting. The agent telephoned the Federal Aviation Administration (“FAA”) and was told that no Notice to Airmen (“NOTAM”) had been issued for structure #1232021.³ The agent also monitored the station’s transmissions and observed that it

¹ 47 C.F.R. §§ 17.51(a), 73.1745(a).

² 47 C.F.R. § 73.49.

³ The FAA would not initially issue a NOTAM, even though the agent notified it of the lighting outage, because the agent was not the owner of the tower.

was transmitting, with full daytime power, when he left the area at 6:15 PM local time. Station KTMR is only authorized as a daytime station, and for the month of December, must cease operations at 5:30 PM local time.

3. On December 15, 2006, the agent with the Houston Office returned to the station KTMR's transmitter site and found the situation unchanged. The gate on one antenna structure's fence was not secured and could easily be opened to allow access to the base of the structure. After dark, a red obstruction light at the top of antenna structure #1232021 was not operating. The agent contacted the FAA, and the FAA still had no record of a NOTAM issued for this structure.⁴ The agent monitored the station's transmissions and heard the station go off the air at about 7:00 PM local time. At the time the station went off the air, it was operating at full daytime power.

4. On December 19, 2006, the agent from the Houston Office once again returned to the transmitter site of station KTMR. The agent observed that the gate on the structure fence was in the same condition as on December 11 and 15. The agent then confirmed using a relative radio frequency meter that all three antenna structures had radio frequency potential at their bases. The agent then inspected the main studio for station KTMR in Victoria, Texas. Personnel present⁵ admitted that the station normally operated from about 6:30 AM to 7:00 PM daily.⁶ He further admitted that no one from the station observed the tower lights at least once every 24 hours and that the station had not installed an automatic light monitoring system. Finally, he stated was not aware that any lights on any of the towers were malfunctioning.

5. On March 21, 2007, the Houston Office issued a *Notice of Apparent Liability for Forfeiture* to Siga Broadcasting in the amount of twenty-one thousand dollars (\$21,000), for the apparent willful and repeated violation of Sections 17.51(a) and 73.1745(a) of the Rules and for the apparent repeated violation of Section 73.49 of the Rules.⁷ Siga Broadcasting submitted a response to the *NALs* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

6. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended,⁸ Section 1.80 of the Rules,⁹ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Siga Broadcasting's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰

⁴ The FAA issued a NOTAM in response to the agent's call on December 18, 2006.

⁵ The staff present had entered into a time brokerage agreement with Siga Broadcasting to operate the station full-time. No employees of Siga Broadcasting were present at the main studio.

⁶ Station KTMR is only authorized to operate up to 7 PM in April, May, June, July and August.

⁷ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732540002 (Enf. Bur., Houston Office, March 21, 2007) ("*NAL*").

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ 47 U.S.C. § 503(b)(2)(E).

7. Section 17.51(a) of the Rules¹¹ requires that red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified. Section 17.47(a)(1) of the Rules requires the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications to make an observation of the antenna structure's lights at least once every 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights.¹² Alternatively, Section 17.47(a)(2) of the Rules requires antenna structure owners to provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner. Siga Broadcasting is the registered owner of antenna structure #1232021 and the licensee of station KTMR. On December 11 and 15, 2006, a red obstruction light on antenna structure #1232021 was extinguished after sunset, and no NOTAM had been issued. Personnel present at the main studio admitted that no one from the station observed the antenna structure on a daily basis and that the station had not installed an automatic alarm system.

8. Section 73.49 of the Rules¹³ requires that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. However, individual tower fences need not be installed if the towers are contained within a protective property fence. On December 11, 15, and 19, 2006, the gate of the fence surrounding one of station KTMR's antenna structures was not secured and could be easily opened, providing ready access to the base of the structure. This antenna structure was confirmed to have radio frequency at the base. There was no perimeter fence around the property. Therefore, the antenna structure was not enclosed within an effective locked fence or protective property fence.

9. Section 73.1745(a) of the Rules¹⁴ states that no broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part. Station KTMR is only authorized to operate from 7:15 AM until 5:30 PM in December. On December 11 and 15, 2006, station KTMR operated after 5:30 PM. Personnel present at the station confirmed that the station operated on a daily basis until 7:00 PM.

10. In its response to the *NAL*, Siga Broadcasting requests reduction or cancellation of the forfeiture, because it claims its violations were neither repeated nor willful. Siga Broadcasting states that, unbeknownst to the personnel present during the inspection, it contracted with two people and hired an employee to inspect the station on a daily basis and that these people failed to fulfill their duties. Accordingly, it asserts it was unaware of the violations prior to the inspection, and, therefore, disputes that its violations were willful. Regarding its violation of Section 73.1745(a) of the Rules, Siga Broadcasting adds that when it cancelled a time brokerage agreement with an entity at the beginning of December 2006, that entity cut the telephone lines to the transmitter, unbeknownst to it, which precluded the transmitter from automatically turning off. Siga Broadcasting also claims that its violations were not repeated, because, even if it were aware of the violations, it would have been unable to correct the fencing and tower light violations between December 11 and December 19, 2006 due to weather and ground conditions. Finally, Siga Broadcasting asserts that, upon being informed of all three of the violations, it took immediate corrective action.

11. We find no basis upon which to reduce or cancel the forfeitures. Siga Broadcasting does not deny that between December 11 and 19, 2006: (1) its antenna structure lights were extinguished and it had not called in a NOTAM; (2) its antenna structure was not enclosed within an effective locked fence; and (3) its station operated after authorized hours. Accordingly, its violations were repeated, as they occurred on more than one day. It is irrelevant if Siga Broadcasting could have corrected the violations between December 11 and 19, 2006. Moreover, we do not find persuasive its arguments that its violations were not

¹¹ 47 C.F.R. § 17.51(a).

¹² 47 C.F.R. § 17.47(a)(1).

¹³ 47 C.F.R. § 73.49.

¹⁴ 47 C.F.R. § 73.1745(a).

willful. Siga Broadcasting's violation of Section 17.51(a) of the Rules was willful, because it failed to install an automatic alarm system or observe visually the antenna structure lights on a daily basis, and lights were extinguished. Its violation of Section 73.1745(a) of the Rules was willful, because entities, authorized by it pursuant to a time brokerage agreement, consciously operated the station after authorized hours. Even assuming Siga Broadcasting hired contractors and employees to inspect the station, station phone lines, and tower lights on a daily basis and those people failed to perform their duties, its violations were willful, because the "Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,"¹⁵ and has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."¹⁶ Finally, Siga Broadcasting's corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹⁷

12. Based on the evidence before us, we find that Siga Broadcasting willfully¹⁸ and repeatedly¹⁹ violated Sections 17.51(a) and 73.1745(a) of the Rules by failing to exhibit red obstruction lighting and operating after local sunset. We also find that Siga Broadcasting repeatedly violated Section 73.49 of the Rules by failing to enclose an antenna tower with radio frequency potential at the base within an effective locked fence.

13. We have examined Siga Broadcasting's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that no reduction of the proposed \$21,000 forfeiture is warranted.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Siga Broadcasting Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-one thousand dollars (\$21,000) for violations of Sections 17.51(a), 73.49, and 73.1745(a) of the Rules.²⁰

¹⁵ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863,-64, para. 7 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991) (holding that a company's reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Petracom of Joplin, L.L.C.*, 19 FCC Rcd 6248 (Enf. Bur. 2004) (holding a licensee liable for its employee's failure to conduct weekly EAS tests and to maintain the "issues/programs" list).

¹⁶ *American Paging, Inc. of Virginia*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 10417, 10420, para. 11 (Enf. & Cons. Inf. Div., Wireless Tel. Bur. 1997) (quoting *Triad Broadcasting Company*, 96 FCC 2d 1235, 1244 (1984)).

¹⁷ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁹ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

²⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.51(a), 73.49, 73.1745(a).

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.²²

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Siga Broadcasting Corporation at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

²¹ 47 U.S.C. § 504(a).

²² See 47 C.F.R. § 1.1914.